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**STATE OF CALIFORNIA**  
**STATE WATER RESOURCES CONTROL BOARD**

In the matter of the Petition of:

CITY OF EUREKA

FOR REVIEW OF THE CALIFORNIA  
REGIONAL WATER QUALITY CONTROL  
BOARD, NORTH COAST REGION'S  
FAILURE TO ACT ON THE CITY OF  
EUREKA'S NATIONAL PERMIT  
DISCHARGE ELIMINATION SYSTEM  
PERMIT APPLICATION

**PETITION FOR REVIEW OF THE  
CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD,  
NORTH COAST REGION'S FAILURE  
TO ACT ON THE CITY OF EUREKA'S  
NATIONAL PERMIT DISCHARGE  
ELIMINATION SYSTEM PERMIT  
APPLICATION**

[Water Code §§ 13320(a) and 13321(a)]

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CITY OF EUREKA

I.

**INTRODUCTION**

The City of Eureka (“City”) respectfully petitions the State Water Resources Control Board (“State Board”) to review the California Regional Water Quality Control Board, North Coast Region’s (“Regional Board”) failure to act on the City of Eureka’s (“City”) National Pollutant Discharge Elimination System (“NPDES”) permit application for the City’s operation of the Elk River Waste Water Treatment Plan (“WWTP”). The Regional Board’s failure to act has injured the City and the public, and has deprived the City of the certainty required to plan for prudent long-term investments in the WWTP. The Regional Board’s failure to act has also needlessly exposed the City to third-party litigation. The City requests that the State Board compel the Regional Board to comply with its mandatory duties under both federal and state law, and timely consider the City’s permit application.

The City owns and operates the WWTP, which is currently subject to the terms and conditions of NPDES Permit No. CA0024449, Regional Board Order No. R1-2016-0001 (the “NPDES Permit”) and the concurrently adopted Cease and Desist Order (“CDO”) No. R1-2016-0012, as subsequently amended by Order R1-2020-0020. In accordance with 40 C.F.R. § 122.46(a) and Water Code § 13380, the NPDES Permit should have been renewed on or about July 31, 2021, but continues to apply to the WWTP through an extension consistent with 40 C.F.R § 122.6(a) and Cal. Code Regs., tit. 23, § 2235.4. The NPDES Permit and the CDO, by their own terms, represented a fundamental regulatory change in the manner in which the Regional Board sought to regulate discharges from the WWTP. As recognized in the NPDES Permit and CDO, the City could not comply with this significant regulatory change immediately. Therefore, time was provided to the City to develop a plan to address this new regulatory system.

In December 2020, the City timely submitted an NPDES permit application (“Application”) to the Regional Board as required by law and as an important next step in implementing the new regulatory system that the Regional Board had imposed on the City. Despite the timely submission of the Application and the City’s repeated request for action, the Regional Board has failed to act on the Application. The Regional Board’s failure to act has

1 deprived the City of the certainty needed to plan for prudent investments in the WWTP to comply  
2 with the newly imposed regulatory system. Without Regional Board action, the City simply  
3 cannot make informed, long-term investments to the WWTP.

4 The City's WWTP has continued to discharge under the extended NPDES Permit.  
5 However, the significant regulatory uncertainty created by the Regional Board's failure to act has  
6 exposed the City to a third-party lawsuit. To resolve this third-party lawsuit, the City has  
7 stipulated to a Consent Decree. In recognition of the need for Regional Board action, both the  
8 City and the plaintiff in the lawsuit agreed in the Consent Decree to pursue petitions to the State  
9 Board if the Regional Board continued to fail to act. This unusual agreement by litigants just  
10 underscores the need for Regional Board action on the Application.

11 On November 10, 2022, in accordance with the Consent Decree, the City and the plaintiff  
12 in the lawsuit asked the Regional Board to take initial action on the City's Application (i.e.,  
13 release a draft permit for public review) as soon as possible, and in no event later than ninety (90)  
14 days, that is, no later than February 8, 2023. The Regional Board initially responded on  
15 November 23, 2022 stating that Regional Board staff had tentatively scheduled a public hearing  
16 on June 8-9, 2023 for the Regional Board to consider the Application and reissue the City's  
17 NPDES permit. Staff further stated that a Notice of Public Hearing would be posted on the  
18 Regional Board webpage during the week of January 30, 2023 identifying the target Regional  
19 Board meeting and describing the public hearing procedures and comment process. The Regional  
20 Board did not meet the January 30, 2023 deadline.

21 On February 13, 2023, the City made one final demand for Regional Board action. It  
22 informed the Regional Board that if no action was taken by February 28, 2023, the City would  
23 file this petition. Since no action has been taken as demanded, the City now files this petition to  
24 the State Board to address the Regional Board's failure to act on or about February 28, 2023.

## 25 II.

### 26 NAME AND ADDRESS OF PETITIONER

27 The Petitioner is the City of Eureka. The names, address, and contact information for the  
28 City are as follows:

Brian Gerving, Director of Public Works  
Autumn E. Luna, City Attorney  
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III.

**THE ACTION OR INACTION OF THE  
REGIONAL BOARD BEING PETITIONED**

On or about February 28, 2023, the Regional Board failed to act on the City's final demand for Regional Board consideration of the City's Application.

IV.

**DATE THE REGIONAL BOARD FAILED TO ACT**

In accordance with the Consent Decree, the Regional Board was requested to act on November 10, 2022 by a written letter. This letter asked the Regional Board to take initial action on the City's Application (i.e., release a draft permit for public review) as soon as possible, and in no event later than ninety (90) days, that is, no later than February 8, 2023. Despite assurances to the contrary, the Regional Board did not take action by that date. On February 13, 2023, the City made a final demand for Regional Board action no later than February 28, 2023. As of March 3, 2023, the Regional Board has not taken action on the Application or released a draft NPDES permit for public review. Therefore, the City files this petition within thirty (30) days of the Regional Board's failure to act.

V.

**STATEMENT OF THE REASONS THE ACTION  
WAS IMPROPER**

Federal and state law require the Regional Board to renew NPDES Permit every five (5) years. In accordance with 40 C.F.R. § 122.46(a), NPDES permits "shall be effective for a fixed term not to exceed 5 years." In accordance with Water Code §13380, the Regional Board is

1 required to review waste discharge requirements “at least every five years.” Despite multiple  
2 requests from the City, the Regional Board has failed to comply with its mandatory duty to  
3 consider and timely act on the City’s Application. This failure to act is inconsistent with federal  
4 and state law, and the State Board should compel the Regional Board to act on the City’s  
5 Application as required by law.

6 **VI.**

7 **HOW PETITIONER WAS AGGRIEVED**

8 The current NPDES Permit and CDO, by the Regional Board’s own admission, is a  
9 fundamental regulatory change for the WWTP. The Regional Board and the City recognized and  
10 agreed that the City would need time, and regulatory certainty, to prudently plan for changes to  
11 the WWTP to implement this entirely new regulatory system. Despite this recognition, the  
12 Regional Board has failed to act on the City’s Application, which is the next required step in the  
13 process to implement the new regulatory system imposed by the Regional Board. The Regional  
14 Board’s failure to act has therefore significantly harmed the City and the public by depriving the  
15 City of the regulatory certainty needed to move forward. To make matters worse, the Regional  
16 Board’s failure to act has resulted in a citizen suit and Consent Decree, which imposed  
17 unnecessary costs to the City and put unnecessary demands on City resources that instead could  
18 have been used to invest in the system. Even now, as reflected in the Consent Decree, the  
19 Regional Board’s failure to act prevents the City from making wise investments in the WWTP  
20 and requires the City to move forward on dual tracks in the absence of regulatory certainty from  
21 the Regional Board. The State Board must step in to help the City and the public find the  
22 certainty needed to move forward.

23 **VII.**

24 **ACTIONS PETITIONERS REQUESTS STATE BOARD TAKE**

25 The City requests the State Board to require the Regional Board to take immediate action  
26 on the City’s Application. At a minimum, the State Board should compel the Regional Board to  
27 release a draft permit within thirty (30) days and hold a hearing on the permit no later than June 9,  
28 2023.

VIII.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION**

A Memorandum of Points and Authorities is filed with this Petition and is incorporated herein by reference.

IX.

**STATEMENT OF COPIES FURNISHED**

A copy of this Petition has been sent to the Regional Water Quality Control Board for the North Coast Region and such other parties and individuals listed on the attached proof of service.

X.

**STATEMENT OF ISSUES RAISED**

The City has raised these issues before the Regional Board on multiple occasions, including, but not limited to, in the letter dated on November 10, 2022 requesting action by February 8, 2023. In addition, the City raised these issues in a letter dated February 13, 2023 and demanded final action by February 28, 2023.

XI.

**CONCLUSION**

For the reasons set forth in this Petition and in the related documents filed herewith, the City respectfully requests the State Board to require the Regional Board to take immediate action on the City's Application. At a minimum, the State Board should compel the Regional Board to release a draft permit within thirty (30) days and hold a hearing on the permit no later than June 9, 2023.

Dated: March 3, 2023,

BEST BEST & KRIEGER LLP

By: /s/ Anya Kwan

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ANYA KWAN  
Attorneys for Defendant  
CITY OF EUREKA